

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36279

SJRE-RAILROAD SERIES—EXEMPTION UNDER 49 C.F.R. § 1150.31—RAIL LINE IN  
HARRIS COUNTY, TEX.

Decided: June 5, 2019

On March 7, 2019, SJRE-Railroad Series (SJRE)<sup>1</sup> filed a verified notice of exemption under 49 C.F.R. § 1150.31 concerning approximately six miles of rail line within the San Jacinto River and Rail Park, of which SJRE is the owner, in Harris County, Tex. (the Line). According to SJRE, the Line connects with Union Pacific Railroad Company and BNSF Railway Company at milepost 344-346 on the Lafayette Subdivision.

On April 5, 2019, the Board issued an order directing SJRE to provide clarification as to certain issues and postponed the exemption's effective date until further order of the Board. As stated in that decision, it is not clear which type of exemption SJRE seeks to invoke. San Jacinto Transportation Company, Inc. (SJTC), already possesses an exemption to operate over the Line, see San Jacinto Transportation—Operating Exemption—SJRE-Railroad Series, FD 35996 (STB served Mar. 25, 2016), and the Board asked SJRE to clarify whether it seeks a change in operator exemption under 49 C.F.R. § 1150.31(a)(3) to replace SJTC or, alternatively, an operating exemption under 49 C.F.R. § 1150.31(a) to operate on the Line in addition to SJTC. The Board provided guidance concerning either approach and directed SJRE to file a supplement to clarify its intended course and other ambiguities in its verified notice. SJRE filed its supplement on April 19, 2019.

Where a verified notice raises too many unanswered questions, the Board will reject it. See FPN-USA, Inc.—Operation Exemption—Tijuana-Tecate Shortline, FD 35155, slip op. at 3 (STB served Aug. 8, 2008); see also Pro-Go Corp.—Operation Exemption—in Suffolk County, N.Y., FD 35120 (STB served Mar. 13, 2008) (rejecting notice of exemption for failing to submit sufficient information to determine whether the transaction qualified for class exemption). Moreover, a verified notice that is incomplete under the Board's rules may be rejected. See, e.g., Wash. & Idaho Ry.—Lease & Operation Exemption—BNSF Ry., FD 35370 (STB served Apr. 23, 2010) (rejecting notice of exemption for failing to submit complete version of lease agreement).

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<sup>1</sup> SJRE describes itself as a noncarrier and a series within San Jacinto Real Estate, a series LLC formed under the laws of the State of Texas. (SJRE Notice 1.)

In its supplement, SJRE states that it is seeking a change in operator exemption under § 1150.31(a)(3). The Board noted in the April 5 decision that, to qualify for that exemption, SJRE should show that SJTC agrees to being replaced. SJRE's supplement, however, states that SJRE "is unable to obtain 'consent' from SJTC to be replaced." The Board's April 5 decision also stated that a change in operator exemption would require SJRE to demonstrate that notice has been provided to any shippers on the Line pursuant to 49 C.F.R. § 1150.32(b). Although SJRE states that "[c]urrently there are no operations being conducted on the Line," it makes no reference to shippers or the requirements of § 1150.32(b) and whether they are applicable or not.

Because SJRE has failed to submit sufficient information for the Board to determine that the proposed transaction qualifies for a change in operator exemption, it will be rejected. This decision does not preclude SJRE from filing a new verified notice under § 1150.31.

It is ordered:

1. SJRE's verified notice of exemption, as supplemented, is rejected.
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.